

GOVERNMENT OF TELANGANA  
ABSTRACT

Tribal Welfare Department - Revision Petition filed by Sri Medarametla Venkata Chowdary @ M.V. Chowdary S/o late Koteswara Rao, R/o Kothagudem Town and Mandal, Bhadradi Kothagudem District (erstwhile Khammam District) against orders of Additional Agent to Government & Project Officer, ITDA Bhadrachalam in CMA No.108/2003, dated 29.6.2005 in respect of land admeasuring acs.3.00 gts in Sy.No.17/1/A situated in Laxmidevipalli village and Mandal, present Bhadradi Kothagudem District (erstwhile Kothagudem Mandal of erstwhile Khammam District) - ALLOWED - Orders - Issued.

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TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No.59

Dated:07.10.2023.

Read the following:-

1. Sri Medarametla Venkata Chowdary @ M.V. Chowdary S/o late Koteswara Rao, R/o Kothagudem Town and Mandal, Bhadradi Kothagudem District dated 29.11.2005.
2. Govt. Memo and Letter No.361/LTR.2/2006 dated 02.02.2006.
3. Orders of the Hon'ble High Court, Hyderabad in W.P.No.26797/2005, dated 15.12.2005.
4. From the Additional Agent to Government, RP.No.361/LTR-2/06-1 (CMA.No.108/03), dated 11.02.2009.
5. Govt.Letter.No.361/LTR-2/2006, dated 09.02.2015, 04.04.2015, 22.07.2015, 15.06.2017, 29.08.2017, 27.02.2018, 26.04.2018, 22.06.2018.
6. Written Arguments filed by the Counsel for the Revision Petitioner dated 17.03.2018.
7. Representation of Revision Petitioner Sri Medarametla Venkata Chowdary S/o. Late Koteswarrao, dated 08.03.2021.
8. Govt.Notice No.361/TW.LTR/2006, dated 22.06.2021 and 08.07.2021.

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ORDER:-

In the reference 1st read above, Sri Medarametla Venkata Chowdhariy @ M.V. Chowdary S/o late Koteswara Rao, R/o Kothagudem Town and Mandal, Bhadradi Kothagudem District has filed Revision Petition through his Counsel before the Government on 29.11.2005 under Section 6 of the AP Scheduled Areas Land Transfer Regulation 1/1959 aggrieved by the orders of the Additional Agent to Government and Project Officer, ITDA, Bhadrachalam in CMA.No.108/2003, dated 29.06.2005 in respect of the land in Sy.No.17/1/A to an extent of acs.3.00 gts situated at Laxmidevipalli village and Mandal, Bhadradi Kothagudem District - gist of the grounds urged in the Revision Petition are:

- Orders of the 1<sup>st</sup> respondent (the Additional Agent to Government, and Project Officer, ITDA, Bhadrachalam) under Revision is arbitrary, not in appreciation of the facts in accordance with law, without jurisdiction and ultra vires the provisions of L.T.Regulation 1/1959 as amended by Regulation, against the decisions of the Hon'ble Supreme Court of India, Hon'ble High Court of A.P. interpreting & settling the Law under Regulation 1/59, and the order under appeal is causing grave prejudice to the petitioner.
- 1<sup>st</sup> respondent passed orders without appreciating the fact that Vuyyuri Venkata Narsaiah (who is shown as 1<sup>st</sup> respondent) the grandfather in relation to the petitioner, originally acquired the schedule land from one Mirza Mastan Ali (shown as appellant) by way of purchase under registered sale deed dated 5/7/1966 under document No.1022/1966 of the Sub Registrar, Kothagudem, and that the same was bequeathed in favour of the petitioner herein, under Will Deed dated 12-10-1969, and in ignorance of the principles of natural justice. The Additional Agent to Government in ignorance of principles of nature justice and without applying mind judicially not at all

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exercised the powers as an appellate tribunal by not calling for the lower court records, not at all perused the documents filed by the petitioner, written arguments filed on his behalf and adopted his own procedure for disposal of the suo-motu appeal which is not known to law. Therefore, the order under appeal is not at all maintainable under Law.

- 1<sup>st</sup> Respondent being a party to the WP No.4660/05 having knowledge of the fact of *lis pendens* of the constitutional validity of the G.O.Ms.No.193 (Sec.D) Department, dated 17-03-2002 and consequent observations made by the Hon'ble High Court of AP in WPMP No.6231/2005 dated 10-03-2005 ethically ought not to have passed any orders in any of the matters pending before it, but hurriedly and arbitrarily passed the orders on pronouncement about his transfer as Joint Collector of Krishna District, dishonestly mentioned the date of pronouncement as 29-06-2005 prejudicially affecting the petitioner in respect of the schedule land and communicated the orders on 26-11-2005 through his dispatch section. In fact, on 29.06.2005 the respondent not taken up the court work.
- The order under revision itself manifest that the impugned orders under revision is purely unreasoned one, not appreciation of the documents of the petitioner, and suppression of the fact of written arguments filed by the petitioner on 6.7.2005 and passed the orders enthusiastically and prejudicially against the petitioner herein even without examining whether the provisions of A.P.Scheduled Areas Land Transfer Regulation 1/1959 confirms any suo motu appeal powers on the 1<sup>st</sup> respondent or the Agent to the Government.
- 1<sup>st</sup> respondent failed to spell reasons for not considering the binding decisions of the Hon'ble Supreme Court of India, Hon'ble High Court of India, as reported in 1995 (6) SCC page 545, 2005 (1) SCJ 59, 2005(1) SCJ 126, 2000 ALT (Revenue) Page-66 & 81, 2003(3) ALT page-127, 2005(2) ALT page-462 & 1998(1) ALT 680, in respect of the issues of Law involved in the present case as submitted by the petitioner in his written arguments and arbitrarily passed the orders, without furnishing the copy of the alleged appeal grounds etc., and without considering the fact of death of the alleged petitioner and the respondent No.1 to the impugned orders, long before the taking cognizance of the appeal.
- 1<sup>st</sup> respondent failed to note that there is no transfer of the schedule land either in favour of the 1<sup>st</sup> respondent or the petitioner herein, in violation of the provisions of Regulation 1/1970.
- The appeal is filed within the limitation period of sixty days from the date of knowledge and receipt of the impugned orders dated 29.06.2005, as communicated on 26.11.2005.

2. In the reference 2<sup>nd</sup> read above, Government have requested the Collector, Khammam and the Addl. Agent to Government & Project Officer Bhadrachalam to furnish Para Wise Remarks and connected case records and rejecting the Stay petition for suspension of impugned orders dated 29.6.2005 of the 1<sup>st</sup> respondent in CMA 108/2003, pending disposal of the Revision before the Government.

3. The Revision Petitioner has filed WP No.26797 of 2005 before the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad praying to direct the respondent No.1 to dispose of the stay petition or appeal itself within a reasonable time and further direct the respondent and their staff not to dispossess the petitioner from the land admeasuring Ac.3.00 gts in Sy.No.17/1/A situated at Laxmidevipally village, Kothagudem Mandal, Khammam District.

The Hon'ble High Court while disposing the above WP 26797 of 2005 on 15.12.2005, made the following order vide reference 2<sup>nd</sup> read above – operative part is extracted below:

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"As the revision is pending before the first respondent, this Court is of the opinion that if the petitioner, who has been in continuous possession, is disposed from the said land the purpose of filing the revision itself will become futile. Having regard to the facts and circumstances of the case and pending disposal of the revision before the first respondent, the petitioner may not be dispossessed from the said land. However, the revisional authority may consider and dispose of the revision as expeditiously as possible after giving reasonable opportunity to the petitioner.

The writ petition is accordingly disposed of."

4. In reference 4<sup>th</sup> read above, the Additional Agent to Government, Bhadrachalam has submitted record of CMA 108/2003, LTR case No.1150/93/KGM, RDO, Kothagudem file No.C/400/99 along with para-wise remarks:

- Appellant contention is that he got the schedule property through a will deed dated 12.12.1969, but not filed the alleged Will before the 1<sup>st</sup> respondent.
- The Hon'ble High Court upheld the GO Ms.No.193, dated 17.03.2002 as such the orders passed by the 1<sup>st</sup> respondent herein are valid.

Further, the Hon'ble High Court of AP in WP No.1996/2005, dated 15.3.2005 Karnati Papamma vs Agent to Government Khammam and (4) others filed by the revision petitioner held that 1<sup>st</sup> respondent has got power to transfer the cases to the 2<sup>nd</sup> respondent. As per the above decisions of the Hon'ble High Court, the 1<sup>st</sup> respondent (Agent to Government) is empowered to transfer the cases and the 2<sup>nd</sup> respondent (Additional Agent to Government) can entertain to decide the cases.

In addition to that the Hon'ble High Court in batch of the Writ Petitions WP Nos.1241/05, 3814, 11731, 11732, 11733, 14138, 23892, 4660 and 26029 of 2005, 462, 13775, 13800, 18900, 23097, 26412, 26417, 21632 of 2006 and 1427, 1959, 2232, 2268, 1620, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 and 6316 of 2007 filed questioning the validity of the GO Ms.No.193, passed a common order dated 29.8.2007. Dismissed the above batch of the Writ Petitions held that the GO Ms.No.193, dated 17.4.2002 does not suffer from any vice or invalidity by reason of not being assented to by the President of India under paragraph 5 (4) of 5<sup>TH</sup> Schedule to the Constitution of India.

Therefore, the contention of the petitioner is not valid, as per orders of the Hon'ble High Court as per batch of above Writ Petitions that the Agent to Government Khammam has got power to transfer the cases to the Addl. Agent to Government and he got power to decide the cases.

It is not correct to say the 1<sup>st</sup> respondent hurriedly and arbitrarily passed orders on pronouncement of his transfer as Joint Collector, Krishna. The 1<sup>st</sup> respondent pronounced the judgement on 29.06.2005.

- The 1<sup>st</sup> respondent after calling the records from the lower court and after due verification passed the orders.
- The order is not antedated, it is only mere allegation made against the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent after due verification of the records and written arguments, passed the order.
- The revision petitioner claiming the schedule property through a Will. He failed to prove genuine of the Will. The revision petitioner to avoid complications under regulation created the alleged will, therefore the lower court (Additional Agent to Government) rightly rejected claim of the revision petitioner.

5. In the reference 5<sup>th</sup> & 8<sup>th</sup> read above, notices were issued to all the parties. Case was called on 26.02.2015, 15.07.2017, 17.03.2018, 05.05.2018, 18.08.2018 and finally on 21.07.2023.

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6. On 18.08.2018, the Counsel for Revision Petitioner in the reference 6<sup>th</sup> read above has filed following written arguments:

- i) There is no involvement of the Tribal interest or Government interest in the subject schedule property.
- ii) The schedule property is the patta land of non-tribal by name Mirza Mastan Baig and he sold it to Vuyyuru Venkata Narasaiah (none other than the husband of the maternal aunt of the revision petitioner i.e. the mother of the revision petitioner and the wife of Vuyyuru Venkata Narasaiah are own & natural sisters and the couple of Vuyyuru Venkata Narasaiah were not blessed with children) under registered sale deed dated 5.7.1966 executed by Mirza Mastan Baig who in turn bequeathed the property under the Will dated 12.10.1969 in favour of Revision Petitioner. Vuyyuru Venkata Narasaiah died on 19.11.1972 at Laxmidevipalli. Accordingly, the Revision Petitioner succeeded the property by operation of law under the Will, which remained undisputed as on date at the instance of any other (class-I or II legal heirs of late Vuyyuru Venkata Narasaiah). The Revision Petitioner is continuing in possession since then. Section 2 (g) of the Land Transfer Regulation 1/1959 does not include the acquisition of property under a testamentary disposition of immovable property in the schedule area, within the meaning of the word/expression "transfer". Section 3 (4) of the Regulation 1/1959 provides that, the expression transfer does not include devolution by succession.
- iii) None of the adjudicating authorities under the Regulation 1/1959 are taking judicial note of the above facts and the Law in the present case.
- iv) The impugned order was alleged to have issued on 29.06.2005 on which date the 1<sup>st</sup> respondent not taken up the proceedings at all. Further, if it so passed on 29.06.2005, the first respondent ought to have got it served upon the (counsel for) the petitioner within a reasonable period thereafter and absolutely there is no need to wait for about five months i.e. till 26.11.2005 for serving it through local dispatch in a cover addressed to the counsel which were already filed as material document. Therefore, the revision petitioner stating that the order is antedated.
- v) This apart, when the written arguments dated 02.07.2005 on behalf of the revision petitioner were filed on 6.7.2015 before the 1<sup>st</sup> respondent, the submission of the 1<sup>st</sup> respondent in his parawise remarks stating that the impugned order is not antedated and that he passed the order after due verification of the records and written arguments. If the order is not antedated one, and that it was passed on 29.06.2005 as contended by the 1<sup>st</sup> respondent, the question of considering the written arguments filed on 6.7.2005 does not arise. Therefore, the very submission of the 1<sup>st</sup> respondent itself clinchingly established that the remarks were submitted falsely and not in a befitting manner being an adjudicating authority as Additional Agent to Government & Ex Officio Joint Collector of Khammam & District & the Project Officer, ITDA. The very such admission of the 1<sup>st</sup> respondent is sufficient to draw the inference that, the impugned order under revision is passed after 06.07.2005 by mentioning the date of order as 29.06.2005, by way of discharging the adjudication of the Appeal matters before it, as a matter of course and in a mechanical way, with non-application of mind judiciously and detrimental to the interest of the justice itself. Therefore, requested to infer and to declare that the impugned order is ante-dated.

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- vi) Being the adjudicating authority, the 1<sup>st</sup> respondent is not empowered to consider the binding precedents of the Hon'ble High Court and the Hon'ble Supreme Court at his conveniences, that too, without giving reasons for not considering the referred Citations and the relevant points of Law & the statutory provision more particularly with regard to the power as an adjudicating authority in the light of the facts and circumstances submitted to the 1<sup>st</sup> respondent.
- vii) The 1<sup>st</sup> respondent failed to spell reasons for not considering the binding decisions of the Hon'ble Supreme Court of India, Hon'ble High Court of India, as reported in 1995 (6) SCC page-545, 2005 (1) SCJ 59, 2005(1) SCJ 126, 2000 ALT (Revenue) Page-66 & 81, 2003 (3) ALT page-127, 2005 (2) ALT page-462 & 1998(1) ALT 680, in respect of the issues of Law involved in the present case as submitted by the petitioner in his written arguments and arbitrary passed the orders, without furnishing the copy of the alleged appeal grounds etc., and without considering the fact of death of the alleged petitioner and the respondent No.1 to the impugned orders, long before the taking cognizance of the appeal.
- viii) The 1<sup>st</sup> respondent failed to note that there is no transfer of the schedule land either in favour of the 1<sup>st</sup> respondent or the petitioner herein, in violation of the provisions of Regulation 1/1970.
- ix) The 1<sup>st</sup> respondent has not filed any counter in the above revision petition, though there are specific allegations against him. On the other hand contradictory to the practice & procedure governing the quasi judicial adjudications, he requested the Government to dismiss the revision by submitting para-wise remarks.
- x) The revision petitioner is in continuous possession and enjoyment of the land measuring an extent of Acs.3.00 gts in Sy.No.17/1/A situated at Laxmidevipalli village, Kothagudem Mandal (hereinafter referred to as schedule property) having acquired it by way of bequest under the will dated 12.10.1969 executed by late Vuyyuri Venkata Narsaiah who is grandfather in relation to the petitioner i.e. the wife of Vuyyuri Venkata Narsaiah and mother of the petitioner are own & natural sisters (copy of which is already in the file of the 2<sup>nd</sup> respondent in LTR case Nos.1150/1993/KGM, 248/2003/Kgm and in 243/2007/Kgm, as well as in the case file of Revenue Divisional Officer, Kothagudem in L.Dis.No.C-400/99. However, once again enclosed herewith as material documents for ready reference). The Said Vuyyuri Venkata Narsaiah had acquired the schedule land by way of purchase under registered sale deed No.1022/66, dated 5.7.1966 from its owner/pattedar viz., late Mirza Mastan Ali for consideration. The testator of the Will/grandfather of the petitioner viz., Vuyyuri Venkata Narsaiah died on 19.11.1972 (copy of death certificate hereby enclosed). Thus, there is no transfer involved in the present case and the revision petitioner is not claiming his possession under any transfer which took place after commencement of the APSALTR 1/59 r/w 1/70 which came into force w.e.f. 03.02.1970.
- xi) When the petitioner is in possession, the 2<sup>nd</sup> respondent, who was located at Paloncha had taken up suomoto enquiry upon report of the Special Deputy Tahsildar (TW) Paloncha dated 8.11.1993 in LTR case No.1150/93/KGM and showing the original pattedar as petitioner and this petitioner as respondent. The respondent appeared and contested by filing the documents such as (1) Registered sale deed dated 5.7.1966 executed by original pattedar in favour of grandfather of the revision petitioner viz., Vuyyuri Venkata Narsaiah, (2) the will deed dated 12.10.1969 executed by Vuyyuri Venkata Narsaiah, bequeathing the schedule land in favour of revision petitioner (3) Land Revenue receipts of 1969-71, 1975-76, 1977-78, 1973-74, 1399 Fasli. Upon

that the 2<sup>nd</sup> respondent passed order dated 21.01.1994 on merits and held that there is no violation of the provisions of Regulation 1/1959 r/w 1/1970 with regard to the possession of the schedule land by the petitioner. Since no appeal was filed, the order became final. Thus, the 1<sup>st</sup> respondent exhausted his powers to initiate case, to conduct adjudication/enquiry and to determine the same.

- xii) After expiry of about five years, upon a false, frivolous and enormous oral complaints of certain fraction of political groups of Kothagudem Town, on 9.2.1999, the then Revenue Divisional Officer, Kothagudem viz., Sri K.Harsha Vardhan had taken up a Revenue enquiry in L.Dis.No.C-400/99 and issued notice to the revision petitioner. The revision petitioner appeared and filed the one and same documents such as (1) Registered sale deed dated 5.7.1966 executed by original pattedar in favour of grandfather of the revision petitioner viz., Vuyyuri Venkata Narsaiah, (2) the will deed dated 12.10.1969 executed by Vuyyuri Venkata Narsaiah, bequeathing the schedule land in favour of revision petitioner (3) Land Revenue receipts from 1969-70 to 1998 and (4) the LTR judgement dated 21.01.1994 in case No.1150/93/KGM, and thereby the revenue enquiry was dropped under the principle of resjudicata by order dated 19.03.1999. Thus, the matter once again ended.
- xiii) After expiry of about more than one and half years from the date of order i.e. 19.03.1999, one Punem Rajaram alleging to have representing an alleged Khammam District Adivasi Sangham addressed a letter to the District Collector stating that the Revenue Divisional Officer, Kothagudem in the absence of any complaints by falsely creating complaints and issuing orders against tribal interest and sent copy of alleged order dated 19.3.1999 in L.Dis.No.4/99 which was received by the O/o Collector on 14.10.2000. Thereby, the District Collector, directed for enquiry by the Joint Collector, Khammam, who conducted enquiry and reported. The Dist. Collector, Khammam endorsed order dated 21.06.2021 in Rc.No.A1/7167/99 to the Magisterial Head Clerk, Collectorate, Khammam that "Let us undo injustice done in LTR and other cases". Accordingly, the District Revenue Officer requested the Magisterial Head Clerk to take further action as endorsed by the District Collector. The Joint Collector, Khammam in his report categorically mentioned that the Special Deputy Collector (Tribal Welfare), Paloncha had already passed judgment on 21.1.1994 itself, there was no need to issue notices and he cannot pass another similar order and made some attributions upon the said Revenue Divisional Officer viz., Harshavardhan.
- xiv) The District Collector in abuse of the powers under the Regulation 1/1959 and without application of mind judiciously to the provisions of Sec.3(3)(ii) of the Regulation and without appreciating that said provision do not empower and confirm any suo-motu appeal power upon him, yet taken up said enormous petition as suo motu appeal as CMA No.16/2003 and further without appreciating that the provisions of AP Agency Rules, 1924 are nothing to do with the enquiries under Regulation 1/1959 and that when he is purport to take any action or pass order it should be done under Regulation 1/1959 itself, erroneously transferred the file of the 1<sup>st</sup> respondent under Rule 11 (4) of AP Agency Rules, 1924 and under GO Ms.No.193.
- xv) The provisions of AP Agency Rules, 1924 are not made applicable to the enquiries by the Tribunals established under the provisions of AP Scheduled Areas Land Transfer Regulation 1/1959, as such the orders of the Agent to the Government, transferring the CMA 33/2002 to this Court under Rule 11 (4) of AP Agency Rules, 1924, purely arbitrary, without jurisdiction and therefore, not tenable under law. Since the very transfer itself is without authority, the Hon'ble Tribunal has no

jurisdiction to take cognizance of the transferred matter and adjudicate & dispose of the same. Therefore, the entire process of transfer, consequent cognizance and the process of issue of notices, and the hearing of the above CMA is without jurisdiction and therefore, is liable to be set aside for want of jurisdiction.

- xvi) It became habit & common practice for the 2<sup>nd</sup> respondent repeatedly taking up the original enquiries in exercise of the suo motu initiation powers in a way of abusing them upon enormous and vague petitions and for no just reasons. Having notice of the pending CMA on the file of the 1<sup>st</sup> respondent in respect of subject land, the 2<sup>nd</sup> respondent has initiated twice the original powers suo moto enquiry in LTR cases bearing Nos.248/2003/KGM and passed order dated 9.6.2004, and upheld the possession of the revision petitioner as lawful and not hit by the Regulation 1/1970. Subsequently, once again the 2<sup>nd</sup> respondent initiated suo motu proceedings in LTR case No.247/2007/KGM having knowledge of pending Revision on the file of the Hon'ble Government and dismissed the case by order dated 3.8.2007 on the ground that it is pending in the Revision proceedings. Thus, it became common on the part of the 2<sup>nd</sup> as well as 1<sup>st</sup> respondent sometimes to entertain the appeal for no just & cogent reasons for the mere statistical purpose and to pass common and proforma orders, detrimental to the law, justice and the parties therein.
- xvii) As on date of taking up suo motu appeal in CMA No.16/2003 by exercising the powers illegally by the Agent to Government/District Collector, Khammam, by showing the names of Mirza Masthan Ali as petitioner and Vuyyuru Venkata Narsaiah as respondent, both are dead. Therefore, the very initiation of the proceedings and consequent transfer under Rule 11 (4) of the AP Agency Rules and consequent renumbering it as CMA NO.103/2003 by the 1<sup>st</sup> respondent, and proceeding with the enquiry and passing of the impugned order is void ab initio, and nullity. It is the settled law that no proceedings can be initiated in the name of a deceased person and against another deceased person, wrongly and deliberately mentioning as if they are alive. Therefore, the very initiation of the suo motu CMA is void ab initio and consequently the entire proceedings before the Agent to Government and subsequent transfer of said CMA to the Hon'ble Tribunal, is beyond the powers and jurisdiction vested with the Hon'ble Tribunal under the provisions of AP Scheduled Areas Land Transfer Regulation 1/1959.
- xviii) The provisions of the said Regulation 1/1959 do not confirm any suo motu power upon the Agent to the Government or the 1<sup>st</sup> respondent being a delegate exercising the powers of the Agent to the Government under Regulation 1/1959 or r/w 1/1970 to take up any matter suo motu as an appeal or decision against the decision of the Agency Divisional officer or the prescribed officer viz., Special Deputy Collector (TW), more particularly, in the name of a deceased person as appellant against another deceased person as respondent. Therefore, the impugned order under revision is void and nullity and the enquiry dealt with by the 1<sup>st</sup> respondent is to be held as vitiated and void ab initio and is liable to be set aside for want of authority, power and jurisdiction.
- xix) This apart, when the respondent is contending that he is in possession of the schedule property by virtue of will deed dated 12.10.1969 executed by the 1<sup>st</sup> respondent i.e. to say by way of testamentary succession, which will not come within the meaning and definition of the expression Transfer as defined in Sec.2(g) of the Regulation, and on the other hand such acquisition is specifically excluded from the purview of the expression transfer. Further, the ancestral of this

respondent acquired the schedule land by way of purchase for consideration under registered sale deed dated 05.07.1966 under document No.1022/1966. Thus, both the deeds i.e. to say the sale deed as well as the will deed are long prior to the commencement of the provisions of Regulation 1/1970 and therefore, the question of violation of provisions of Regulation by this respondent or his ancestral does not arise, and therefore, the Hon'ble Tribunal absolutely has no jurisdiction to adjudicate the matter.

- xx) The authorities under the provisions of Regulation 1/1959 are empowered and vested with the jurisdiction to take cognizance and eject only those persons who came into possession under the transfer took place after commencement of the provisions of the Regulation 1/1959, but not in respect of the transaction which alleged to have taken place prior to the commencement of the Regulation 1/1959. But, in the present case, there is no transfer at all and the petitioner claims possession by way of succession within the purview of law.
- xxi) When the 1<sup>st</sup> respondent exercising any appeal powers or revision powers under any law, it should call for the records of the lower authority has to verify the records and material documents, and then to sit over the legality, propriety, correctness of the order under appeal or revision and has to pass order according to law on it. But, the contention of the 1<sup>st</sup> respondent in this regard is self-contradictory in his remarks one way he stated that he verified the records, if it so he could have found the copy of the registered sale deed as well as the will deed and the land revenue receipts relied upon by this petitioner and ought to have adjudicated whether the lower authority passed order upon them. But, contradictory to his own remarks, the 1<sup>st</sup> respondent further contended that the revision petitioner failed to file alleged Will and further without any basis as if a person claiming certain rights over the subject land has contended that to avoid complications under regulation, the petitioner has created the will. Firstly, the 1<sup>st</sup> respondent or any adjudicating authority under the Regulation 1/1959 has no jurisdiction or power to sit over the title, and genuineness of the documents, which is always within the jurisdiction of the civil courts. The 1<sup>st</sup> respondent or Agent to the Government under Regulation 1/1959 does not vest any powers of the Civil Court to the adjudicating authorities. Therefore, the question of proof does not arise and it arises only any person makes an allegation accordingly with any sufficient and cogent documentary evidence before the competent Civil Court by filing appropriate proceedings for such declaration. If the 1<sup>st</sup> respondent having any such doubt, he ought to have filed a suit for declaration as such with the footing as plaintiff before the competent court against the revision petitioner and ought to have produced the evidence and ought to have subjected for examination in chief and cross by himself and his witnesses, then the revision petitioner will proceed to prove the genuineness of the subject will. This sort of baseless observations on the part of the 1<sup>st</sup> respondent being an adjudicating authority exercising appellate powers are not appreciable under law and cannot be sustained.
- xxii) The initiation of suo motu appeal one way without powers and after lapse of four years from the date of impugned order and consequent process of enquiry etc. by the Agent to the Government and subsequently by the Hon'ble Tribunal is totally void ab initio and is against the decision of the Hon'ble Supreme Court of India reported in 1995 (6) SCC page 545, Hon'ble High Court of Andhra Pradesh reported in 2000 ALT (Rev) page-66, and 2000 ALT (Rev) page-81 (copies of which are already filed before the lower authority and are available in the case records), which are firmly applicable and are binding on the Hon'ble Tribunal.

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xxiii) The Hon'ble High Court in its decision dated 31.01.2012 in WP No.6640/2007 between Keesara Narayana Reddy & another Vs the Additional Agent to Government, PO ITDA, Bhadrachalam held that, the 1<sup>st</sup> respondent herein entertaining an appeal suo motu apart from being without any competency or authority is also clearly an arbitrary exercise of such jurisdiction and accordingly granted the relief of Writ of Mandamus declaring action of the 1<sup>st</sup> respondent in entertaining LTR Appeal Nos.129 & 130 of 2005 suo motu is without any power of authority under AP Scheduled Areas Land Transfer Regulation 1/1959 as amended by Regulation 1/1970 and is therefore, illegal and without jurisdiction (copy enclosed).

xxiv) The Hon'ble High Court in its decision dated 03.01.2013 in WP No.11198/2012 between Smt. Alapati Kanaka Durga & another Vs the Special Deputy Collector (TW), KR Puram and others, held that testamentary disposition is outside the scope of Section 2 (g) and thereby Section 3 of the Regulation 1/1959 r/w 1970 (copy enclosed).

7. Therefore, prayed the Government to allow the Revision Petition and set aside the impugned order dated 29.6.2015 in CMA No.108/2003 on the file of the 1<sup>st</sup> respondent as void, nullity and beyond the competency, without jurisdiction or power and that the very initiation of proceedings as suo motu appeal by the Agent to the Government as CMA No.16/2003 at the first instance, and by way of transfer under Rule 11 (4) of AP Agency Rules, 1924 to the file of the 1<sup>st</sup> respondent and consequent taking cognizance as CMA No.108/2003 and the act of proceeding with enquiry including passing the order with anti date as 29.6.2005 without there being conducting of any court on that date further serving it with an exaggerated delay on 26.11.2005, is void ab initio without propriety, irregular, material irregularity and is an illegal exercise of the appeal powers under Sec.3(3)(ii) of the Regulation 1/1959, in the interest of justice and equity.

8. Perused the record.

9. Initially, an LTR case was registered vide case No.1150/93/KGM, by the Special Deputy Collector (TW), Paloncha which was dropped on 21.1.1994 with the following findings:

- Case was initiated on the report of Special Deputy Tahsildar (TW) Paloncha dated 8.11.1993 – Mirja Mosin Ali Baig as petitioner and Medarametla Venkata Choudary as Respondent (petitioner herein).
- When both parties called on 21.1.1994, petitioner called absent and respondent present. He deposed that the suit land was purchased by his grandfather in the year 1966 from the petitioner. In the year 1969 i.e. on 12.10.1969, his grandfather executed Will Deed in his favour and thus he became legal heir of the land. He further stated that he had not purchased it from the petitioner. Respondent filed following documents:
  - Copy of Registered document dated 5.7.1966 executed by petitioner Sri MirjaMosin Ali Baig in the name of V.Venkatappaiah.
  - Will Deed by Sri V.Venkatappaiah in the name of Sri M.V.Choudary.
  - Land Revenue Receipts for the years 1969-71, 1975-76, 1977-78, 1973-74, 1399-F.
- On the evidence produced before the court, it is evident that the land transfer involved had taken place between non-tribals prior to 3.2.1970. Hence, APSA LTR 1 of 1959 read with Regulation I of 1970 will not attract. Therefore, further proceedings were dropped in the matter.
- Schedule – District: Khammam, Mandal: Kothagudem; Village: Laxmidevipalli, Survey Number 17/1/A, extent: acs.3.00 gts”.

10. Later, suo-motu appeal was taken up by the Agent to Government, Khammam assigning number as CMA 16/2003 and stayed operation of lower court orders on 25.11.2003. Subsequently, in terms of GO Ms.No.193, dated 17.3.2002,

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GO Ms.No.274, General Administration (Ser.A) Department, dated 15.6.2002, instructions communicated by the Director of Tribal Welfare, AP, Hyderabad in Lr.No.0923/03/TRIPR-CELL-LTR, dated 22.10.2003 and also exercising powers conferred under Rule 11 of A.P.Agency Rules, 1924, the Appeal was transferred to the Additional Agent to Government & Project Officer, ITDA Bhadrachalam, where it was renumbered as CMA 108/2003 and the said Authority had taken up enquiry on 30.4.2005, 28.5.2005 and passed orders on 29.6.2005 – gist of which is as follows:

- Notices were issued to Mirza Masthan Ali Baig and Medarametla Venkata Chowdari and V.Venkata Narasaiah. Notices were returned with an endorsement stating that Appeal not residing in the village and his whereabouts not known, Respondent No.1 died and his grandson and Respondent No.2 was served the Notice. Later, the Counsel for Respondent No.2 Sri Nanduri Srinivasa Rao filed a Memo on 28.5.2005 before the Court stating that the appellant and the Respondent No.1 died and he has not received any copy of appeal grounds in the case.
- As seen from the lower court orders, Appellant and Respondent were alive at the time of passing orders by the lower court. In the said order, Respondent No.2 is also one of the parties. Whenever any LTR case is initiated with regard to land claimed to be in possession of the respondent, it is bounden duty of the respondent to explain or prove how he came into possession of the schedule land.
- Secondly, he filed a memo stating that the appellant and Respondent No.1 died, but he has not filed any death certificates to prove his claim that the above persons are dead. Without any documentary proof, his version cannot be accepted. The 2nd respondent who is a party in lower court and who is well versed with the case and his possession of property bound to file the counter or any written explanation to prove his case. It appears that the intention of the II respondent is to drag on the proceedings, or to overcome the case on some technical grounds, which is not at all advisable. He failed to utilize the opportunities given by this court to prove his claim. Consequently, the suo-motu appeal is allowed.

11. Upon perusal of the evidences available on the case records and in view of the arguments advanced by the Counsel for Revision Petitioner supported by documentary evidences now the below points that arise for adjudication before the Government are:

- i) **Whether the Agent to Government, Khammam has suo motu appeal powers?**
- ii) **Whether the Agent to Government, Khammam has powers to transfer the case to the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam?**
- iii) **Whether the transaction between Mirza Ali Baig to Vuyyuru Venkata Narsaiah through document No.1022/1966, dated 5.7.1966 is valid?**
- iv) **Whether the bequest by Vuyyuru Venkata Narsaiah through Will Deed dated 12.10.1969 to the Revision Petitioner herein is valid?**

12. **Findings**

**For (i)** – According to Section 3 (2) (a) of the Land Transfer Regulation, 1959 as amended by the Regulation I of 1970 – “Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency, the Agency Divisional Officer or any other prescribed Officer may, on application by anyone interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.

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According to Section 3 (3) (a) - "Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such times as may be prescribed -

- (i) if the decree or order was passed by the Agent, to the State Government;
- (ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and
- (iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.

(b) - The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.

The Counsel for Revision Petitioner argued that the initiation of suo motu appeal one way without powers and after lapse of four years from the date of impugned order and consequent process of enquiry etc. by the Agent to Government and subsequently by the Hon'ble Tribunal is totally void ab initio and is against the decision of the Hon'ble Supreme Court of India reported in 1995 (6) SCC page 545, Hon'ble High Court of Andhra Pradesh reported in 2000 ALT (Rev) page-66, and 2000 ALT (Rev) page-81.

The Counsel for Revision Petitioner submitted another citation of the Hon'ble High Court wherein the Hon'ble High Court in its decision dated 31.01.2012 in WP No.6640/2007 between Keesara Narayana Reddy & another Vs the Additional Agent to Government, PO ITDA, Bhadrachalam held that, the 1<sup>st</sup> respondent herein entertaining an appeal suo motu apart from being without any competency or authority is also clearly an arbitrary exercise of such jurisdiction and accordingly granted the relief of Writ of Mandamus declaring action of the 1<sup>st</sup> respondent in entertaining LTR Appeal Nos.129 & 130 of 2005 suo motu is without any power of authority under AP Scheduled Areas Land Transfer Regulation 1/1959 as amended by Regulation 1/1970 and is therefore, illegal and without jurisdiction.

Therefore, in view of the above legal position, the Agent to Government, Khammam has no suo motu appeal powers but can take up suo motu original application and decide or transfer to his subordinate authority prescribed under the Statute.

**For (ii) -** Government in GO Ms.No.193, dated 17.04.2002 have issued orders delegating following powers to the Project Officers of ITDAs under para 5 (1) of the Fifth Schedule to the Constitution of India, to exercise powers vested in the District Collectors in respect of the Laws relating to the scheduled areas:

1. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation I of 1959).
2. The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1950 (Regulation I of 1960).
3. The Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960 (Regulation II of 1960).
4. The Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1970 (Regulation III of 1970).
5. The Andhra Pradesh Mahals (Abolition and conversion into Ryotwari) Regulation, 1969 (Regulation I of 1969).
6. The Andhra Pradesh Muttas (Abolition and conversion into Ryotwari) Regulation, 1969 (Regulation II of 1969).
7. The Andhra Pradesh Scheduled Areas Ryotwari Settlement Regulation (Regulation II of 1970).

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The Hon'ble High Court of Andhra Pradesh in Writ Petition No.1996/2005, dated 15.3.2005, between Karnati Papamma Vs Agent to Government, Khammam and (4) others filed by the revision petitioner held that 1<sup>st</sup> respondent has got power to transfer the cases to the 2<sup>nd</sup> respondent. As per the above decisions of the Hon'ble High Court, the 1<sup>st</sup> respondent (Agent to Government) is empowered to transfer the cases and the 2<sup>nd</sup> respondent (Additional Agent to Government) can entertain to decide the cases.

The Hon'ble High Court also in the batch of Writ Petition Nos.1241/05, 3814, 11731, 11732, 11733, 14138, 23892, 4660 and 26029 of 2005, 462, 13775, 13800, 18900, 23097, 26412, 26417, 21632 of 2006 and 1427, 1959, 2232, 2268, 1620, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 and 6316 of 2007 which were filed questioning the validity of the GO Ms.No.193, passed a common order dated 29.8.2007. Dismissed the above batch of the Writ Petitions held that the GO Ms.No.193, dated 17.4.2002 does not suffer from any vice or invalidity by reason of not being assented to by the President of India under paragraph 5 (4) of 5<sup>TH</sup> Schedule to the Constitution of India.

Therefore, the Agent to Government, Khammam has got powers to transfer the cases to the Additional Agent to Government, Bhadrachalam and the Additional Agent to Government, Bhadrachalam got power to decide the cases.

**For (iii)** - The transfer of immovable property between two non-tribals i.e. Mirza Ali Baig (pattedar) and Sri Vuyyuru Venkata Narsaiah (grandfather of Revision Petitioner herein) through registered document No.1022/1966, dated 5.7.1966 is valid registered transaction and prior to the advent of the Regulation I of 1970 came into force w.e.f. 3.2.1970.

**For (iv)** - According to Section 2 (g) of the Regulation I of 1959 as amended by the Regulation I of 1970 - 'Transfer means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.

The Hon'ble High Court in its decision dated 03.01.2013 in WP No.11198/2012 between Smt. Alapati Kanaka Durga & another Vs the Special Deputy Collector (TW), KR Puram and others, held that "it becomes clear that notwithstanding the enlargement of the scope of transfer of immovable properties, the definition has clearly excluded from its purview, the testamentary dispositions. Once the Legislature felt it appropriate to keep the testamentary dispositions outside the purview of the definition of transfer under the Regulation, it is not at all open to any authority to invoke its jurisdiction, vis-à-vis any accrual of property in a scheduled area to a citizen under a Will - therefore, testamentary i.e. Will is outside the scope of Section 2 (g) of the Regulation.

As seen from the record, the Will Deed dated 12.10.1969 executed by Sri Vuyyuru Venkata Narsaiah in favour of the Revision Petitioner is found available in the record of lower authority. Therefore, the remarks of the Additional Agent to Government, Bhadrachalam at Sl.No.2, are not correct.

The Revision Petitioner has also filed an Affidavit duly Notarized wherein one Smt.Vuyyuru Ramana W/o late Nageswar Rao, aged: 68 years, occ: housewife R/o H.No.4-171, Penamaluru village and Mandal, Krishna District, came down to Kothagudem and solemnly affirm and stated on oath that she is well acquainted with the facts of the affidavit. Her father-in-law and Vuyyuru Venkata Narsaiah resident of Laxmidevipalli of the then Kothagudem Taluq are brothers. The said Vuyyuru Venkata Narsaiah has got lands at Laxmidevipalli. He has no children. At his old age one Medarametla Koteswar Rao and his son who are his nearest relatives have looked after

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him and his wife Tulasamma's welfare in all respects. As such the said Vuyyuru Venkata Narsaiah has executed a Will deed dated 12.10.1969 before the witnesses bequeathing his land of extent of acs.3.00 guntas in Sy.No.17/1/A situated at Laxmidevipalli village of the then Kothagudem Taluq of Khammam District in favour of Medarametla Venkata Chowdary S/o Medarmetla Koteswara Rao. She knows the said fact and that the said will deed is true and valid one. The said Vuyyuru Venkata Narsaiah died on 19.11.1972. After his death as per the said will deed the said Medarametla Venkata Chowdary came into possession and enjoyment of the said land is enjoying it till today. The said Tulasamma also died on 25.02.1989. She has deposited before the Notary on 2.5.2019 at Kothagudem.

Further, the Revision Petitioner has also filed the Death Certificate dated 25.04.2009 related to the Testator i.e. Sri Vuyyuru Venkata Narsaiah wherein the Executive Officer, Gram Panchayat, Laxmidevipalli has certified that Sri Vuyyuru Venkata Narsaia, permanent Resident of H.No.9-33, Prasanthinagar, Laxmidevipalli, Kothagudem was expired on 19.11.1972 – this was registered on 11.4.2009 as per the orders of the Revenue Divisional Officer, Kothagudem in Proceedings No.D4/D/296/2009, dated 23.3.2009.

The Revision Petitioner has also filed the Death Certificate No.TSGGCC 40028995, dated 2.7.2018 issued by the Registrar of Births & Deaths, Laxmidevipalli Gram Panchayat, Bhadradri Kothagudem District (through Mee Seva in Form No.6) related to the death of Smt.Vuyyuru Tulasamma W/o late Vuyyuru Venkata Narsaiah on 25.02.1989 at H.No.9-29, Prashanthinagar, Laxmidevipalli GP and Mandal, Bhadradri Kothagudem District.

13. Government, after careful examination of the matter and in view of the above findings fortified with the valid documentary evidences, the Revision Petition filed by Sri Medarmetla Venkata Chowdary @ M.V.Chowdary S/o late Koteswara Rao, R/o Kothagudem, Bhadradri Kothagudem District, is hereby ALLOWED duly setting aside orders of the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam in CMA No.108/2003, dated 29.6.2005.

14. The Addl. Agent to Government & Project Officer, ITDA, Bhadrachalam Bhadradri Kothagudem District shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr.CHRISTINA Z.CHONGTHU,  
SECRETARY TO GOVERNMENT.

To

The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam  
Bhadradri Kothagudem District (By RPAD)

The Special Deputy Collector (TW), Bhadrachalam,  
Bhadradri Kothagudem District (By RPAD)

Sri Medarametla Venkata Chowdary @ M.V.Chowdary S/o Late Koteswara Rao  
R/o. H.No. 9-35/1A2, Prashanth Nagar Gram Panchayat,  
Laxmidevipalli Mandal, Bhadradri Kothagudem District (By RPAD)

Copy to:-

The Agent to Government and District Collector,  
Bhadradri Kothagudem District (By RPAD)

Sri Nanduri Srinivasa Rao, Advocate, Bhadrachalam,  
Bhadradri Kothagudem District ( Advocate for Petitioner) (By RPAD)

The Tahsildar, Laxmidevipalli Mandal  
Bhadradri Kothagudem District (By RPAD)

(With a direction to serve the copy of GO to concerned parties).

The P.S to Hon'ble Minister (STW)

The P.A to Secretary (TW)

The P.A to Special Secretary (TW).

SC/SF.

//FORWARDED::BY ORDER//

SECTION OFFICER.